

AMENDED IN ASSEMBLY AUGUST 7, 2006

**SENATE BILL**

**No. 438**

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**Introduced by Senator Migden**

(~~Coauthor: Assembly Member McCarthy~~ *Coauthors: Assembly  
Members Benoit and McCarthy*)

February 17, 2005

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An act to add Section 1638.1 to the Business and Professions Code, relating to oral and maxillofacial surgery, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 438, as amended, Migden. Oral and maxillofacial surgery.

Existing law, the Dental Practice Act, provides for the licensure and regulation of the practice of dentistry by the Dental Board of California. Existing law requires all funds received under the act to be placed in the State Dentistry Fund, which is continuously appropriated.

This bill would require a person who is licensed to practice dentistry who is not a physician and surgeon to apply for and receive a permit to perform elective facial cosmetic surgery prior to performing elective facial cosmetic surgery. The bill would also require an applicant for a permit to furnish specified information and to pay an application fee of \$500, and a renewal fee of \$200. The bill would prohibit a licensee from performing such a surgery procedure, except at specified health facilities.

The bill would authorize the board to adopt regulations related to the permits, and would require the board to appoint a credentialing committee to review applicant qualifications and recommend whether or not to issue a permit to the applicant.

Because this bill would increase the amount of fees deposited in the State Dentistry Fund, a continuously appropriated fund, it would make an appropriation.

~~Because a willful violation of this bill's provisions would be a misdemeanor, the bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: yes. Fiscal committee: yes.  
State-mandated local program: ~~yes~~ no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 1638.1 is added to the Business and
- 2 Professions Code, to read:
- 3 1638.1. (a) (1) A person licensed pursuant to Section 1634
- 4 who wishes to perform elective facial cosmetic surgery shall first
- 5 apply for and receive a permit to perform elective facial cosmetic
- 6 surgery from the board.
- 7 (2) A permit issued pursuant to this section shall be valid for a
- 8 period of two years and must be renewed by the permitholder at
- 9 the time his or her license is renewed. Every six years, prior to
- 10 renewal of the permitholder's license and permit, the
- 11 permitholder shall submit evidence acceptable to the
- 12 credentialing committee that he or she has maintained continued
- 13 competence to perform the procedures authorized by the permit.
- 14 The credentialing committee may limit a permit consistent with
- 15 paragraph (1) of subdivision (e) if it is not satisfied that the
- 16 permitholder has established continued competence.
- 17 (b) The board may adopt regulations for the issuance of the
- 18 permit that it deems necessary to protect the health, safety, and
- 19 welfare of the public.
- 20 (c) A licensee may obtain a permit to perform elective facial
- 21 cosmetic surgery by furnishing all of the following information
- 22 on an application form approved by the board:

1 (1) Proof of successful completion of an oral and maxillofacial  
2 surgery residency program accredited by the Commission on  
3 Dental Accreditation of the American Dental Association.

4 (2) Proof that the applicant has satisfied the criteria specified  
5 in either subparagraph (A) or (B):

6 (A) (i) Is certified, or is a candidate for certification, by the  
7 American Board of Oral and Maxillofacial Surgery.

8 (ii) Submits to the board a letter from the program director of  
9 the accredited residency program, or from the director of a  
10 postresidency fellowship program accredited by the Commission  
11 on Dental Accreditation of the American Dental Association,  
12 stating that the licensee has the education, training, and  
13 competence necessary to perform the surgical procedures that the  
14 licensee has notified the board he or she intends to perform.

15 (iii) Submits documentation to the board of at least 10  
16 operative reports from residency training or proctored procedures  
17 that are representative of procedures that the licensee intends to  
18 perform from both of the following categories:

19 (I) Cosmetic contouring of the osteocartilaginous facial  
20 structure, which may include, but is not limited to, rhinoplasty  
21 and otoplasty.

22 (II) Cosmetic soft tissue contouring or rejuvenation, which  
23 may include, but is not limited to, facelift, blepharoplasty, facial  
24 skin resurfacing, or lip augmentation.

25 (iv) Submits documentation to the board showing the surgical  
26 privileges the applicant possesses at any licensed general acute  
27 care hospital and any licensed outpatient surgical facility in this  
28 state.

29 (B) (i) Has been granted privileges by the medical staff at a  
30 licensed general acute care hospital to perform the surgical  
31 procedures set forth in paragraph (A) at that hospital.

32 (ii) Submits to the board the documentation described in  
33 clause (iii) of subparagraph (A).

34 (3) Proof that the applicant is on active status on the staff of a  
35 general acute care hospital and maintains the necessary privileges  
36 based on the bylaws of the hospital to maintain that status.

37 (d) The application shall be accompanied by an application fee  
38 of five hundred dollars (\$500) for an initial permit. The fee to  
39 renew a permit shall be two hundred dollars (\$200).

(e) (1) The board shall appoint a credentialing committee to review the qualifications of each applicant for a permit. Upon completion of the review of an applicant, the committee shall make a recommendation to the board on whether to issue or not issue a permit to the applicant. The permit may be unqualified, entitling the permitholder to perform any facial cosmetic surgical procedure authorized by this section, or it may contain limitations if the credentialing committee is not satisfied that the applicant has the training or competence to perform certain classes of procedures, or if the applicant has not requested to be permitted for all procedures authorized by this section.

(2) The credentialing committee shall be comprised of five members, as follows:

(A) A physician and surgeon with a specialty in plastic and reconstructive surgery who maintains active status on the staff of a licensed general acute care hospital in this state.

(B) A physician and surgeon with a specialty in otolaryngology who maintains active status on the staff of a licensed general acute care hospital in this state.

(C) Three oral and maxillofacial surgeons licensed by the board who are board certified by the American Board of Oral and Maxillofacial Surgeons, and who maintain active status on the staff of a licensed general acute care hospital in this state, at least one of whom shall be licensed as a physician and surgeon in this state. Two years after the effective date of this section, any oral and maxillofacial surgeon appointed to the committee who is not licensed as a physician and surgeon shall hold a permit pursuant to this section.

(3) The board shall solicit from the following organizations input and recommendations regarding members to be appointed to the credentialing committee:

(A) The Medical Board of California.

(B) The California Dental Association.

(C) The California Association of Oral and Maxillofacial Surgeons.

(D) The California Medical Association.

(E) The California Society of Plastic Surgeons.

(F) Any other source that the board deems appropriate.

(4) The credentialing committee shall meet at a time and place directed by the board to evaluate applicants for permits. A

1 quorum of three members shall be required for the committee to  
2 consider applicants and make recommendations to the board.

3 (f) A licensee may not perform any elective, facial cosmetic  
4 surgical procedure except at a general acute care hospital, a  
5 licensed outpatient surgical facility, or an outpatient surgical  
6 facility accredited by the Joint Commission on Accreditation of  
7 Healthcare Organizations (JCAHO), the American Association  
8 for Ambulatory Health Care (AAAHC), the Medicare program,  
9 or an accreditation agency approved by the Medical Board of  
10 California pursuant to subdivision (g) of Section 1248.1 of the  
11 Health and Safety Code.

12 (g) For purposes of this section, the following terms *shall* have  
13 the following meanings:

14 (1) “Elective cosmetic surgery” means any procedure defined  
15 as cosmetic surgery in subdivision (d) of Section 1367.63 of the  
16 Health and Safety Code, and excludes any procedure that  
17 constitutes reconstructive surgery, as defined in subdivision (c)  
18 of Section 1367.63 of the Health and Safety Code.

19 (2) “Facial” means those regions of the human body described  
20 in Section 1625 and in any regulations adopted pursuant to that  
21 section by the board.

22 (h) A holder of a permit issued pursuant to this section shall  
23 not perform elective facial cosmetic surgical procedures unless  
24 he or she has malpractice insurance or other financial security  
25 protection that would satisfy the requirements of Section 2216.2  
26 and any regulations adopted thereunder.

27 (i) A holder of a permit shall comply with the requirements of  
28 subparagraph (D) of paragraph (2) of subdivision (a) of Section  
29 1248.15 of the Health and Safety Code, and the reporting  
30 requirements specified in Section 2240, with respect to any  
31 surgical procedure authorized by this section, in the same manner  
32 as a physician and surgeon.

33 (j) Any violation of this section constitutes unprofessional  
34 conduct and is grounds for the revocation or suspension of the  
35 person’s permit, license, or both, or the person may be  
36 reprimanded or placed on probation. Proceedings initiated by the  
37 board under this section shall be conducted in accordance with  
38 Chapter 5 (commencing with Section 11500) of Part 1 of  
39 Division 3 of Title 2 of the Government Code, and the board  
40 shall have all the powers granted therein.

1     ~~SEC. 2. No reimbursement is required by this act pursuant to~~  
2     ~~Section 6 of Article XIII B of the California Constitution because~~  
3     ~~the only costs that may be incurred by a local agency or school~~  
4     ~~district will be incurred because this act creates a new crime or~~  
5     ~~infraction, eliminates a crime or infraction, or changes the~~  
6     ~~penalty for a crime or infraction, within the meaning of Section~~  
7     ~~17556 of the Government Code, or changes the definition of a~~  
8     ~~crime within the meaning of Section 6 of Article XIII B of the~~  
9     ~~California Constitution.~~

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